

Application No. 10/542,822
Paper Dated: December 29, 2010
In Reply to USPTO Correspondence of September 1, 2010
Attorney Docket No. 6077-052204

REMARKS

The Office Action of September 1, 2010 has been reviewed and the Examiner's comments carefully considered. Claims 1-6 are pending in this application.

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 2002/0088748 (US '748) to Allcock et al. The Examiner asserts that paragraphs [0010-0011] of US '748 teach all of the limitations of the claimed invention. Additionally, claims 4-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Allcock et al. in view of Takenishi et al., US 6,017,742.

As noted above, US '748 was designated by the Examiner as a prior art reference under 35 U.S.C. § 102(b). However, the above-referenced application claims priority to United States Provisional Application No. 60/441,396, which was filed on January 21, 2003. US '748 has a publication date of July 11, 2002, which is less than one year before the priority date of the present application. Accordingly, US '748 is not prior art under 35 U.S.C. § 102(b). It is prior art under 35 U.S.C. § 102(a).

Further, Roy H. Hammerstedt and Stephen Schwartz, the named inventors of the present application, are also named inventors of US '748. As set-forth in the accompanying Declaration of Prior Invention under 37 C.F.R. § 1.132, Hammerstedt and Schwartz alone conceived of the subject matter mentioned in paragraphs [0010-0011] of US '748. It should also be noted that the subject matter of paragraphs [0010-0011] of US '748 was not fully disclosed and claimed until the filing of the present application.

According to MPEP 716.10:

When subject matter, disclosed but not claimed in a patent application filed jointly by S and another, is claimed in a later application filed by S, the...joint patent application publication is a valid reference available as prior art under 35 U.S.C. 102(a)...unless overcome by...an unequivocal declaration by S under 37 CFR 1.132 that he or she conceived or invented the subject matter disclosed in the...published application.

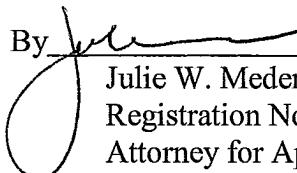
Thus, the subject matter contained in paragraphs [0010-0011] of US '748 is not available as prior art in view of the accompanying Declaration of Hammerstedt and Schwartz.

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CONCLUSION

Based on the foregoing remarks and accompanying Declaration, reconsideration of the rejections and allowance of claims 1-6 are respectfully requested.

Respectfully submitted,
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